

25 CV 651

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		<i>District</i> <u>Western District of New York</u>
<i>Name</i> <u>Dontavia McMorris</u>	<i>Prisoner No.</i> <u>LCN #159580</u>	<i>Case No.</i>
<i>Place of Confinement</i> <u>Eric County Correctional Facility</u>		
<i>Name of Petitioner (include name under which convicted)</i> <u>Dontavia McMorris</u>		<i>Name of Respondent (authorized person having custody of petitioner)</i> <u>V. John Garcia Sheriff of ECCF</u>
<i>The Attorney General of the State of:</i>		

PETITION

1. Name and location of court which entered the judgment of conviction under attack County
Court of Erie 25 Delaware Avenue Bflo, NY 14202
2. Date of judgment of conviction The cause on pretense of confinement is defective
indictment dated October 15, 2024
3. Length of sentence Indefinite to life
4. Nature of offense involved (all counts) Kidnapping in the first degree PL 135.25(1),
20.00; Kidnapping in the second degree PL 135.20, 20.00; Assault
in the first degree PL 120.10(4), 20.00; Assault in the second degree
PL 120.05(2), 20.00; Robbery in the first degree PL 160.50, 20.00;
Robbery in the second degree, PL 160.10(1).
5. What was your plea? (Check one)

(a) Not guilty ☒

 (b) Guilty ☒

 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

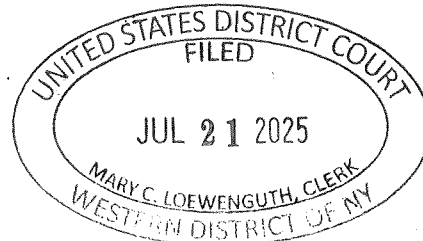
6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐

 (b) Judge only ☐
7. Did you testify at the trial?

Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐



9. If your answer to 8. was "yes," attach a copy of the appeals court decision to this petition and answer the following:

(a) Name of court (e.g., NYS Sup. Court, 4th Dept.) _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

10. Did you seek further review of the appeals court decision by a higher state court (e.g., the NYSCourt of Appeals)?

Yes ☐ No ☐

11. If your answer to 10. was "yes," attach a copy of the higher state court decision to this petition and answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

12. Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☐

13. If your answer to 12. was "yes," attach a copy of the United States Supreme Court decision to this petition and please answer the following with respect to each direct appeal you asked the United States Supreme Court to review:

(a) Result _____

(b) Date of result and citation, if known _____

(c) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g. a petition under NY CPL § 440, a state habeas petition, or a previous petition under 28 U.S.C. 2254) with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

15. If your answer to 14. was "yes," attach a copy of that court's decision to this petition and give the following information:

(a) Name of court Supreme Court of the State of New York, County of Erie

(b) Nature of proceeding Petition for a State writ of Habeas Corpus

(c) Date Filed _____

(d) List all grounds you raised (1) Petitioner/defendant, is entitled to release pursuant to the 5th Amend and NYS Statute CPL 180.80

(2) _____

(3) _____

(4) _____

- (e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☒

(f) Result N/A

(g) Date of result May 15th, 2025

16. If your answer to 14. was "yes" and you also filed a second petition, application, or motion, attach a copy of that court's decision to this petition and give the same information:

(a) Name of court Supreme Court of the State of N.Y. County of Erie

(b) Nature of proceeding Second Petition for a State writ of Habeas Corpus

(c) Date Filed April 3rd, 2025

(d) List all grounds you raised (1) Detention is unlawful

(2) State Court Judge is bias and prejudice

(3) State Court Judge is proceeding without subject matter jurisdiction

(4) _____

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☒

(f) Result N/A

(g) Date of result MAY 15th, 2025

As to any third, fourth, etc. petition, application, or motion, attach a copy of that court's decision to this petition and give the same information asked for under 15. and 16.

17. If your answer to 14. was "yes" and if the court did not grant the petition(s), application(s), or motion(s) you listed under 15. and 16., did you appeal to an intermediate court of appeals (e.g., the New York State Court of Appeals or the Second Circuit Court of Appeals)?

Yes ☐ No ☒

18. If your answer to 17. was "yes," attach a copy of the appeals court decision to this petition and answer the following regarding each petition, application, or motion:

(a) Name of court N/A

(b) Date Filed _____

(c) Result _____

(d) Date of result and citation, if known _____

(e) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

19. Did you appeal to the highest state court (e.g., the NYS Court of Appeals) or the United States Supreme Court for review of decisions regarding the petition(s), application(s), or motion(s) you listed in 15. and 16.?

(a) First petition	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
(b) Second petition	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
(c) Third petition	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

[List any other petition and indicate yes or no.]

20. For each "yes" answer in 19., attach a copy of that court's decision to this petition and give the following information:

(a) Name of court N/A

(b) Date filed _____

(c) Result _____

(d) Date of result and citation, if known _____

(e) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

21. If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

(1) Any Appeal would not be time efficient for justice.

(2) The State Habeas Corpus Process in this case is unconstitutional.

22. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize briefly the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. See 28 U.S.C. §2254(b). If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. See 28 U.S.C. §2244(b).

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of Petitioner's statutory right to be released from state custody pursuant to JCP 180.80

Supporting FACTS (state briefly without citing cases or law):

Petitioner was unlawfully detained and held to answer for an infamous crime without a lawful indictment on October 15th, 2024. After petitioner qualified for release from custody after the passing of more than 144 hours pursuant to NYS CPL §180.80.

- B. Ground two: Denial of 5th Amendment Right to Due Process, Petitioner/defendant right to due process in State Court was violated

Supporting FACTS (state briefly without citing cases or law): (1) Petitioner/defendant right to due process in State Court was violated by Prosecutorial Misconduct where the prosecution failed to give petitioner/defendant any notice of any grand jury proceedings. (2) The petitioner/defendant's 5th Amend. Right was violated by Judicial Misconduct when County Court Judge while acting with bias and prejudice committed perjury in his own Court to aid the prosecution and to manufacture subject matter jurisdiction.

- C. Ground three: Denial of Petitioner/defendant's statutory right to have the unlawful indictment dismissed pursuant to NYS CPL § 210.45.

Supporting FACTS (state briefly without citing cases or law): Petitioner was entitled to have the unlawful indictment dismissed when aether motion to dismiss hearing the prosecution failed to prove that notice was ever given to petitioner prior to indictment.

- D. Ground four: Denial of effective assistance of Counsel

Supporting FACTS (state briefly without citing cases or law): Petitioner filed a motion to remove Counsel in criminal proceedings in State Court because petitioner's lawyer refused to honor petitioner's wishes and desires to present legal defenses on the petitioner's behalf. In addition, the lawyer acted in a way that would unlawfully waive the petitioner's 5th Amend. right to due process.

23. If you did not previously present any of the grounds listed in 22A, 22B, 22C, and 22D in any other court, state or federal, state briefly what grounds you did not present and give your reasons for not presenting them:

N/A

24. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes

☐

No

☒

(a) Name of court _____

(b) Nature of proceeding _____

(c) Date filed _____

(d) List all grounds you raised (1) _____

(2) _____

(3) _____

(4) _____

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you challenge in this petition:

(a) At preliminary hearing Michael Charles Cimas

(b) At arraignment and plea Michael Charles Cimas

(c) At trial _____

(d) At sentencing _____

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes

☐

No

☒

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes

☐

No

☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes

☐

No

☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7-10-2025

(Date)

ICN # 159580

Dontaine Morris

Signature of Petitioner

Erie County Correctional Facility
11581 Walden Avenue
Alden, New York 14004

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

Dontavia McMorris,
(Insert your name) ~~Plaintiff~~/Petitioner

For Permission to Prosecute as a Poor
Person a Matter against

John Garcia, Sheriff of
the Erie County Correctional Facility,
Defendant(s)/Respondent(s)

AFFIDAVIT IN SUPPORT
APPLICATION TO PROCEED
AS A POOR PERSON

Index No. I 2025600249

STATE OF NEW YORK
COUNTY OF Erie ss:
(County where notarized)

Dontavia McMorris, being duly sworn, says:
(Insert your name)

1. I am the Petitioner. I reside at
(Insert one - plaintiff / petitioner / defendant / respondent)

Inmate # ICN 159580 (ECCF) in the County of Erie
(Insert street address, city/town/village, state and zip code) (Insert name of county)

and State of New York.

2. I am about to commence a Special Proceeding for:
(Insert commence or defend) (Insert lawsuit or special proceeding)

(Briefly describe the nature of the relief sought)

a writ of habeas corpus

This lawsuit is based upon: The deprivation of Petitioner's
(Describe briefly the factual basis for the lawsuit/special proceeding about to be commenced/defended)

substantial due process rights under the 5th and 14th
Amendments to the U.S. Constitution.

RECEIVED
APR 03 2025

ERIE COUNTY
DEPARTMENT OF LAW

(If any prior request has been made, provide a description of where, when and by whom the request was made, the result, and if the application was unsuccessful, why you believe you are entitled to apply again.)

WHEREFORE, I respectfully ask for an order permitting me to prosecute
/defend this action/special proceeding as a poor person.

Darlene Morris
(Sign your name in the presence of a Notary Public)
Darlene Morris
(Print your name)

Sworn to before me this

17th day march of, 2025

Ronald Dolyk
Notary Public

RONALD DOLYK
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec 31, 2026

PRESENT HON, _____
Judge of the Supreme Court

Supreme court of the state of New York
County of Erie

In the matter of a Proceeding Under Article 70 of the CPLR
For a Writ of Habeas Corpus, for DONTAVIA MCMORRIS,

PETITIONER

PITION for a WRIT

HABEAS CORPUS

Index No.

-against-

Sheriff of the Erie County Correctional Facility they need
JOHN GARCIA

RESPONDENT

TO THE SUPREME COURT, ERIE COUNTY

1 Petitioner is Defendant, DONTAVIA MCMORRIS ICN # 159580 (hereinafter referred to as "petitioner"), the person for who this petition is made.

2 That the petitioner is unlawfully detained of her liberty by sheriff John Garcia of the Erie County Correctional Facility located at 11581 Walden Ave., Alden NY in lieu of \$50,000 bail and in violation of her right to release pursuant to Cpl. 210.45, (4)(c) where the defendant's moving papers established, as a matter of law, that the county court must dismiss the grand jury indictment against the defendant as defective and order the immediate release of the defendant.

3 That the cause or pretense of the detention is the county court judge who gave false and perjured testimony in his own court, prejudicially in favor of the prosecution for the purpose of obstruction of justice in the manufacturing of false subject matter jurisdiction. (see ex. A)

4. That a court or judge of the United States does not have exclusive jurisdiction to order the petitioner's release.

Open

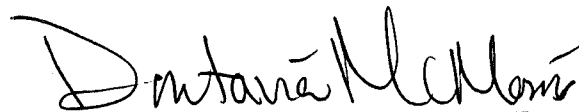
5. The nature of the illegal detention is a violation of the petitioner's 5th amendment due process clause with the petitioner being held to answer for an infamous crime upon the unlawful indictment returned by a defective grand jury proceeding.

6. That the consequence of the aforesaid, petitioner is unlawfully detained in violation of her right to due process of law as protected by the federal and state constitutions and the state statutes.

7. That no appeal has been taken from the order of detention.

8. That one previous application for a writ on different grounds has been made, (see ex. B)

WHEREFORE, your petitioner respectfully request judgement ordering her immediate release from custody forthwith and any other further relief that the court deems just and proper




DONTAVIA MCMORRIS, ICN # 159580

"I DONTAVIA MCMORRIS, affirm under penalty of perjury that the foregoing petition for a writ of habeas corpus is true and accurate to the best of my knowledge and belief,

Sworn to 24th of march, 2025

Dated : Buffalo



RONALD DOLYK
COMMISSIONER OF DEEDS
in and For the City of Buffalo, Erie County, NY
My Commission Expires Dec. 31, 2026

1 STATE OF NEW YORK : COUNTY COURT
2 COUNTY OF ERIE : CRIMINAL TERM

3 THE PEOPLE OF THE STATE OF NEW YORK,

FURTHER PROCEEDINGS

4
5 -vs-

IND-73556-24/001
LEGACY # 02009-2024
DOB: 11/20/02

6
7
8 DONTAVIA McMORRIS,

9 Defendant.

10
11 25 Delaware Avenue
12 Buffalo, NY 14202
February 13, 2025

13 **B e f o r e :**

14 **HONORABLE PAUL B. WOJTASZEK**
Supreme Court Justice

15 **A p p e a r a n c e s :**

16 **MICHAEL J. KEANE, ESQ.**
Erie County District Attorney
17 **BY: ALICIA M. LILLEY, ESQ.**
Assistant District Attorney
18 Appearing for the People

19 **JAMES DeMATTEO, ESQ.**
20 Appearing for the Defendant

21 **P r e s e n t :**

22 **DONTAVIA McMORRIS**
23 Defendant
24
25

FURTHER PROCEEDINGS

2

1 (Proceedings commenced at 10:42 a.m.)

2 THE COURT: Call your case.

3 MS. LILLEY: Good morning, Your Honor. Alicia
4 Lilley on behalf of the People. The next matter before
5 the Court is People of The State of New York versus
6 Dontavia McMorris under Erie County Legacy Number 02009
7 of 2024 and Indictment Number 73556-24/001. The
8 defendant is present this morning in custody with
9 counsel. Mr. James DeMatteo is standing in for
10 Mr. Michael Cimasi.

11 THE COURT: Mr. DeMatteo, good morning.

12 MR. DeMATTEO: Good morning, Your Honor.

13 THE COURT: We are here and you have agreed to
14 stand in for Mr. Cimasi who is unavailable today. The
15 very limited background you have on this case is that
16 Ms. McMorris has filed a pro se motion for various forms
17 of relief. When we were last here Monday, she asked for
18 a brief adjournment so she could review the responding
19 papers in opposition. I believe that was a reasonable
20 request and I granted that. We are here today for the
21 argument on those motions.

22 For the purposes of today, I have allowed
23 Ms. McMorris to argue the motion herself. Mr. Cimasi
24 said that he reviewed it and adopted it in order to
25 facilitate her moving forward. What I did not do and

FURTHER PROCEEDINGS

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1 have not done yet is conducted the search and inquiry to
2 make sure that she understands the importance of the
3 right to effective assistance of counsel and what she
4 would be giving up if she were to represent herself.
5 I'm going to save that for another day.

6 For today's purposes, Ms. McMorris, good morning.

7 THE DEFENDANT: Good morning, Your Honor.

8 THE COURT: Have you had enough time to review
9 the papers from Ms. Lilley that were filed last Monday?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you prepared to proceed?

12 THE DEFENDANT: Yes.

13 THE COURT: Ms. Lilley, are you prepared to
14 proceed?

15 MS. LILLEY: Yes, Your Honor.

16 THE COURT: And again, Mr. DeMatteo is
17 standing in for the limited purposes of being your
18 attorney because Mr. Cimasi is not here.

19 THE DEFENDANT: I understand. May I read?

20 THE COURT: Is there anything else you want to
21 say before I start?

22 THE DEFENDANT: I'm ready to read.

23 THE COURT: You may proceed.

24 THE DEFENDANT: Good morning, Your Honor. I
25 have intended to prepare a written response, but my

FURTHER PROCEEDINGS

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1 incarceration and time-limited has prevented me from
2 being able to do so. However, the fact that the record
3 in this matter indicates that the People never provided
4 the defendant prior notice of the People's intention to
5 present the matter to the Grand Jury.

6 The People cite Dorsey and Miller in their answer
7 filed with the Court. However, the People's reliance on
8 Dorsey and Miller is misplaced and that the record in
9 the instant case is void of any documentary proof that
10 would verify the People's thoughts, implication that
11 notice was given prior to indictment.

12 What the record does show is that the People
13 knowingly and with fraudulent intent provided the
14 defendant with a misleading notice dated October 18,
15 2024, which states that the defendant has been indicted
16 on October 18, 2024, and that the Office of Court
17 Administration would be assigning an official indictment
18 number. See the People's letter dated October 18, 2024,
19 attached to the defendant's affidavit in support of
20 defendant motion to dismiss.

21 The purpose of the People's fraudulent
22 misrepresentation of the facts in that letter was
23 achieved in this matter and the defendant was
24 unconstitutionally indicted as a result. Therefore, and
25 because the record on the matter indicates that no prior

FURTHER PROCEEDINGS

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1 notice was ever given by the People and that the People
2 employed fraud in obtaining the indictment that is
3 before the Court, the defendant's Fifth Amendment rights
4 were violated.

5 This Court, as a matter of law, in fact, must
6 dismiss the indictment in its entirety. Thank you, Your
7 Honor. I now rest.

8 THE COURT: All right. So you've read those
9 cases that you said they misplaced or they relied upon
10 erroneously, that was the Dorsey and Miller case?

11 THE DEFENDANT: Yes.

12 THE COURT: And at that time you were
13 represented by counsel, right?

14 THE DEFENDANT: Yes.

15 THE COURT: And there was -- I'm aware there
16 was a felony hearing that had already commenced. And
17 then during the course of that hearing, the District
18 Attorney's Office took some different measures and they
19 presented the case to the Grand Jury.

20 THE DEFENDANT: Yes.

21 THE COURT: And it's upon that proceeding that
22 you believe that your Fifth Amendment rights were
23 violated and you are entitled to the dismissal of the
24 indictment --

25 THE DEFENDANT: Yes, Your Honor.

FURTHER PROCEEDINGS

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1 THE COURT: -- in its entirety.

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Lilley?

4 MS. LILLEY: Your Honor, I only note -- I rest
5 on my papers. But I would note that notice was provided
6 to the defendant that the People were proceeding to
7 Grand Jury both on the record on October 11th of 2024,
8 in Buffalo City Court, as well as immediately after that
9 proceeding in writing it was submitted to defense
10 counsel as well.

11 THE COURT: Was that written notice made as
12 part of your response?

13 MS. LILLEY: I don't believe I attached it;
14 however, I can provide it to the Court.

15 THE COURT: You have it with you?

16 MS. LILLEY: I do. Your Honor, I have it
17 attached to another motion response. I could get a
18 single copy for the Court.

19 THE COURT: That's fine. All right. There is
20 a notice. Again, Ms. Lilley, you filed this in response
21 to a co-defendant's motion?

22 MS. LILLEY: That's correct, Your Honor.

23 THE COURT: I'm familiar with the argument
24 because I have reviewed this exhibit before. But, Ms.
25 McMorris, there is a correspondence between Mr. Brendan

FURTHER PROCEEDINGS

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1 Fitzgerald, who was co-counsel with Ms. Lilley when this
2 matter was initially prosecuted, and it's dated October
3 10th. The time is one thirty-seven p.m. And it is a
4 written notice advising the five co-defendants who are
5 charged in the indictment and their counsel of the
6 scheduled Grand Jury presentment. And it was scheduled
7 for October 11th at nine-thirty a.m. And it further
8 advised should your client wish to testify before the
9 Grand Jury, please clearly advise our office in writing
10 on or before the return date so we may make proper
11 arrangements.

12 THE DEFENDANT: Your Honor, I never waived my
13 rights, though.

14 THE COURT: I understand. You were
15 represented by counsel at the time. You were. You
16 already admitted that, right?

17 THE DEFENDANT: Yes. I understand that.

18 THE COURT: Okay. And you were present at the
19 felony hearing?

20 THE DEFENDANT: Yes, I was.

21 THE COURT: And a record was made -- or
22 advisement on the record was made as to the District
23 Attorney's intention relative to presenting this matter
24 to the Grand Jury. And then a written notice was
25 followed up. Do you want to see this? Just take a look

FURTHER PROCEEDINGS

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1 at that. It's now part of this motion argument.

2 THE DEFENDANT: The Erie County Grand Jury
3 will hear testimony and I never got a chance to give
4 testimony or testify at the Grand Jury proceeding.

5 THE COURT: That's your argument. But your
6 argument is predicated on you not being provided the
7 requisite notice so you could make an intelligent
8 decision as to whether or not you wish to exercise your
9 statutory right to testify before the Grand Jury.

10 MS. LILLEY: And, Your Honor, I would note for
11 the record there was no notice given by the defendant
12 requesting to be heard and to be brought before the
13 Grand Jury which is why she was not brought over because
14 they did not assert that right. And in addition to
15 that, this motion is untimely if that is the challenge
16 that she's making.

17 THE COURT: It is required to be made within
18 five days of arraignment. It has clearly not been made
19 timely. But under the circumstances, Ms. McMorris is
20 proceeding pro se. That's one of the disadvantages of
21 not being trained in the law. We will get to that on
22 another occasion.

23 Is there anything else you wish to say?

24 THE DEFENDANT: I didn't know anything about
25 this until now, so.

FURTHER PROCEEDINGS

9

1 THE COURT: All right. That's your position
2 and of course that's memorialized on the record. Among
3 other items of relief, you also wanted me to review the
4 Grand Jury minutes for legal sufficiency in the event I
5 deny this motion, right? You wanted me to determine
6 whether or not the indictment is based on the requisite
7 reasonable cause defined in Section 70.10 of the
8 Criminal Procedure Law, right?

9 THE DEFENDANT: Yes.

10 THE COURT: I have reviewed your motion and
11 I've listened carefully to your argument which you have
12 very succinctly made. I also reviewed the papers in
13 opposition from Ms. Lilley. In addition to what she
14 argued in her papers, she also provided a copy of this
15 notice which went to all five co-defendants.

16 And based on all of that and upon due deliberation,
17 your motion is denied in its entirety. I'm going to
18 reverse on the legal sufficiency of the Grand Jury
19 minutes. I've reviewed them already, but I'm going to
20 review them again with a special recognition of what you
21 have argued, but you want me to determine whether or not
22 they are based on legally sufficient evidence and I will
23 do so. You may have also loosely used the term about
24 them being defective. I'll make that determination as
25 well.

FURTHER PROCEEDINGS

1 Ms. McMorris.

2 MR. DeMATTEO: I'll let Mr. Cimasi know about
3 it, Judge.

4 MS. LILLEY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 THE DEFENDANT: Can I have a copy, please?

7 THE COURT: You need a copy of the notice?

8 MS. LILLEY: Certainly. I can get it to you

9 unless the Court can make a copy of it now.

10 THE COURT: Yeah. Why don't we do that.

11 (Proceedings concluded at 10:56 a.m.)

12 * * * * *

13 Certified to be a true and accurate transcript.

14 *Lindsey L Elliott*
15 LINDSEY V. ELLIOTT,
16 Official Court Reporter
17
18
19
20
21
22
23
24
25

PRESENT HON, _____
Judge of the Supreme Court

Supreme Court of the state of New York
county of Erie

In the matter of a Proceeding Under Article 70 of the CPLR
For a Writ of Habeas Corpus, for JAJUAN BOLDEN, on behalf
Of DONTAVIA MCMORRIS,

PETITIONERS

-against-

Sheriff of the Erie County Correctional Facility
JOHN GARCIA

RESPONDENT

PETITION for a WRIT
HABEAS CORPUS
Index No.

TO THE SUPREME COURT, ERIE COUNTY

1 Petitioner is the father of DONTAVIA MCMORRIS ICN # 159580 (hereinafter referred to as "petitioner"),
The person on whose behalf this petition is made.

2 That the petitioner is unlawfully detained and restrained of her liberty by Sheriff JOHN GARCIA of the
Erie County Correctional Facility located at 11581 Walden Avenue, Alden N.Y. in lieu of \$50,000 bail and
in violation of her right to release Pursuant to CPL 180.80 were ~~no~~ more than 144 hours has elapsed with
no disposition or no formal charges having ever been filed.

3 That the cause or pretense of the detention is an alleged indictment returned in a defective grand jury
proceeding where the petitioner was deprived of her 5th amendment right to appear before the grand
jury and give testimony on ~~our~~ own behalf. A copy of the DA's alleged Letter and alleged indictment is
attached as exhibits A&B.

4 That a court or judge of the United States does not have exclusive jurisdiction to order the petitioner's
release.

5 The nature of the illegal detention is a violation of the 5th amendment due process clause where the
petitioner is being held to answer for infamous crime upon a unlawful indictment returned by a
defective grand jury proceeding.



OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

MICHAEL J. KEANE
ACTING DISTRICT ATTORNEY

October 18, 2024

DONTAVIA MCMORRIS
520 VIRGINIA STREET, APT 36
BUFFALO, NY 14202

Re: People v DONTAVIA MCMORRIS
ECDA Legacy No.: 02009-2024

Dear DONTAVIA MCMORRIS:

I am writing to inform you that you have been indicted by an Erie County Grand Jury. The indictment was returned on **October 18, 2024**. In accordance with Criminal Procedure Law §210.10, I am advising you that an arraignment on this indictment has been scheduled for **OCTOBER 24, 2024, at 2:00 p.m.** before the **HON. PAUL WOJTASZEK, J.S.C.** presiding at **SUPREME COURT, PART 16, SECOND FLOOR, 25 DELAWARE AVENUE, BUFFALO, NEW YORK**. Please be present at that time.

Please be advised that this case will be assigned an official indictment number by the Office of Court Administration.

If you fail to appear on the aforesaid date, an indictment warrant for your arrest will be issued.

If a lower court bail was posted, please be prepared to provide proof/receipt for the court or it may not be continued in Superior Court without verification.

Enclosed is a copy of the indictment which was filed against you.

Very truly yours,

MICHAEL J. KEANE
ACTING DISTRICT ATTORNEY

By: RACHEL L. NEWTON
Assistant District Attorney
Chief, Grand Jury Bureau
Rachel.Newton@erie.gov

RLN/bbs

Copies to:

Arraignment Schedule

Chief Clerk's Office

Judge's Chambers

BRENDAN W. FITZGERALD

MICHAEL C. CIMASI, ESQ.

25 DELAWARE AVENUE • BUFFALO, NEW YORK 14202-3903 • (716) 858-2424 • FAX: (716) 858-7425 • www.erie.gov
DONTAVIA MCMORRIS (DOB 11/20/2002)ECHC

At IAS Part ____ of the Supreme Court
of the State of New York, held in and
for the County of _____ at the
Courthouse, _____,
_____, New York
the ____ day of _____, 20__.

PRESENT: HON. _____
Justice of the Supreme Court

In the Matter of the Application of

Dontavia McMorris
(Insert your name) Plaintiff(s)/Petitioner(s)

For Permission to Prosecute as a Poor
Person a Matter against

ORDER

Index No. _____

Defendant(s)/Respondent(s)

Upon the annexed affidavit of Dontavia McMorris
(Insert your name)

sworn to _____ 20__, the _____ and the certificate
(Insert date affidavit sworn to before notary) (Insert: verified complaint / petition / motion)

of N/A ESQ., dated _____
(Insert name of attorney & date if submitted. If not, leave blank.)

And it being alleged that said Petitioner has a good
(Insert: plaintiff(s) / petitioner(s) / defendant(s) / respondent(s))

cause of action or claim or defense based upon The deprivation of
(Briefly describe the underlying facts of your cause of action or claim)
Petitioner's rights under the 5th and 14 Amendments to
the U.S. Constitution.

And it being alleged that he/she is unable to pay the costs, fees and expenses to
prosecute/defend this action, and that there is no other person beneficially interested in
the action thereof,

Now on motion of Dontavia McMorris, Petitioner
(Insert your name) (Insert: plaintiff(s) / petitioner(s) /
defendant(s) / respondent(s))

it is hereby

ORDERED that:

A. The motion is denied on the grounds that the _____
failed to make. (Insert: plaintiff(s) / petitioner(s) / defendant(s) / respondent(s))

1 ____ A sufficient showing of a meritorious cause of action/defense
and/or

2 ____ A sufficient showing of indigence

Papers may be resubmitted upon payment of fees, in a timely manner

-OR-

B. ____ The motion is granted and the _____
(Insert: plaintiff(s) / petitioner(s) / defendant(s) / respondent(s)) (Insert your name)
_____ permitted to proceed herein as a poor person(s), and it is further
(is / are)

ORDERED that the County Clerk shall make no charge in connection with the
prosecution/defense of this matter/proceeding, and it is further

ORDERED that any recovery by judgment or settlement in favor of the

_____ shall be paid to the Clerk of the Court to await distribution
(Insert: plaintiff(s) / petitioner(s) / defendant(s) / respondent(s))

pursuant to court order.

Hon.
JUSTICE OF SUPREME COURT

SUPREME/COUNTY COURT : ERIE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

DONTAVIA MCMORRIS, DAQUEL BRAXTON,
JEREMIAH MARTIN, RAYMONE WILSON, and
SAVANNAH BROSIUS

ECDA Legacy No. 02009-2024

THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses
DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON,
and SAVANNAH BROSIUS, and each of them, of the following crime:

FIRST COUNT: KIDNAPPING IN THE FIRST DEGREE, in violation of Penal Law
§§135.25(1), 20.00, in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH
MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of
October, 2024, in this County, while acting in concert, abducted another person, to wit: Jay
Honeycutt, with intent to compel a third person to pay or deliver five-hundred dollars in U.S.
currency as ransom.

SECOND COUNT: AND THE GRAND JURY OF THE COUNTY OF ERIE, by
this indictment, accuses DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN,
RAYMONE WILSON, and SAVANNAH BROSIUS, and each of them, of the following crime:

KIDNAPPING IN THE SECOND DEGREE, in violation of Penal Law §§135.20,
20.00, in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN,
RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of October, 2024, in
this County, while acting in concert, abducted another person, to wit: Jay Honeycutt.

THIRD COUNT: AND THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, and each of them, of the following crime:

ASSAULT IN THE FIRST DEGREE, in violation of Penal Law §§120.10(4), 20.00, in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of October, 2024, in this County, while acting in concert, in the course and furtherance of the commission of a felony, to wit: Robbery in the Second Degree, a participant in the crime caused serious physical injury to Jay Honeycutt, who was not a participant in the crime by pouring boiling water on him.

FOURTH COUNT: AND THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, and each of them, of the following crime:

ASSAULT IN THE SECOND DEGREE, in violation of Penal Law §§120.05(2), 20.00, in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of October, 2024, in this County, while acting in concert, with intent to cause physical injury to another person, caused such injury to Jay Honeycutt by hitting him with a dangerous instrument, to wit: a belt.

FIFTH COUNT: AND THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, and each of them, of the following crime:

ROBBERY IN THE FIRST DEGREE, in violation of Penal Law §§160.15(1), 20.00, in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of October, 2024, in this County, while acting in concert, forcibly stole certain property, to wit: bookbag, cell phone, and bank card from Jay Honeycutt, and in the course of the commission of the crime or immediate flight therefrom another participant caused serious physical injury to Jay Honeycutt, who was not a participant in the crime.

SIXTH COUNT: AND THE GRAND JURY OF THE COUNTY OF ERIE, by this indictment, accuses DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, and each of them, of the following crime:

ROBBERY IN THE SECOND DEGREE, in violation of Penal Law §160.10(1), in that the said DONTAVIA MCMORRIS, DAQUEL BRAXTON, JEREMIAH MARTIN, RAYMONE WILSON, and SAVANNAH BROSIUS, on or about the 2nd day of October, 2024, in this County, being aided by another person actually present, forcibly stole certain property, to wit: bookbag, cell phone, and bank card from Jay Honeycutt.

S/MICHAEL J. KEANE

MICHAEL J. KEANE *per [signature]*
ACTING DISTRICT ATTORNEY OF ERIE COUNTY